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BEFORE THE ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
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In the matter of:

DOCKET NO. S-20867A-12-0459

TRI-CORE COMPANIES, LLC, an Arizona
limited liability company,

**SECURITIES DIVISIONS' RESPONSE IN
OPPOSITION TO MOTION TO DISMISS**

TRI-CORE MEXICO LAND
DEVELOPMENT, LLC, an Arizona limited
liability company,

TRI-CORE BUSINESS DEVELOPMENT,
LLC, an Arizona limited liability company,

ERC COMPACTORS, LLC, an Arizona
limited liability company,

ERC INVESTMENTS, LLC, an Arizona
limited liability company,

C&D CONSTRUCTION SERVICES, INC.,
a Nevada corporation;

PANGAEA INVESTMENT GROUP, LLC,
an Arizona limited liability company, d/b/a
Arizona Investment Center,

JASON TODD MOGLER, an Arizona
resident,

BRIAN N. BUCKLEY and CHERYL
BARRETT BUCKLEY, husband and wife,

CASIMER POLANCHEK, an Arizona
resident,

NICOLE KORDOSKY, an Arizona resident,

Respondents.

Arizona Corporation Commission

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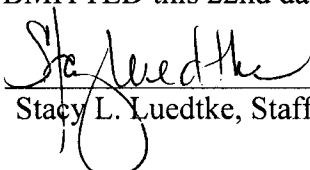
APR 22 2014

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1 The Securities Division of the Arizona Corporation Commission ("the Division") submits
2 the following Response in Opposition to Respondents Jason Mogler, Tri-Core Companies, LLC,
3 and Tri-Core Business Development, LLC's ("Moving Respondents") Motion to Dismiss filed on
4 March 17, 2014 ("Motion to Dismiss").

5 This Response is supported by the following Memorandum of Points and Authorities.

6
7 RESPECTFULLY SUBMITTED this 22nd day of April, 2014.

8 
9 Stacy L. Luedtke, Staff Attorney for the Securities Division

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. Introduction.**

12 The Division filed this action on November 8, 2012. This matter has already proceeded to
13 hearing twice, with the Division presenting its case and resting. The conclusion of the hearing is
14 scheduled to occur on May 6-8, 2014 to allow Moving Respondents to present their case. Moving
15 Respondents have requested, and been granted, continuances of the hearing three times. See
16 Eleventh Procedural Order.

17 Notwithstanding, on April 17, 2014, less than three weeks before the hearing is scheduled
18 to resume, Moving Respondents filed the current Motion to Dismiss. Not only is the Motion to
19 dismiss untimely, but there is no basis to grant any relief.

20 **II. Argument.**

21 Although the basis for the Motion to Dismiss is questionable at best, the Division assumes
22 that Moving Respondents are arguing that the Arizona Corporation Commission ("Commission")
23 has no jurisdiction or authority to bring actions against individuals and limited liability companies
24 such as Moving Respondents.¹ This argument is simply wrong. The Commission, and therefore
25 the Division, has the ability to enforce violations of the Arizona Securities Act.

26 ¹ Moving Respondents also ask if the Commission has "the legal authority to be asking for anything" from Moving Respondents. See Motion to Dismiss, p. 3. This is not a matter of production of documents or testimony, and the

1 The power designated to the Commission is found not only in Article 15 of the Arizona
2 Constitution, but its implementing statutes, i.e. the Arizona Securities Act (“Act”). *See* A.R.S. §§
3 1801, *et seq*; *Commercial Life v. Wright*, 64 Ariz. 129, 139, 166 P.2d 943, 949 (1946). It is a
4 violation of the Act to offer or sell unregistered securities, for an unlicensed salesman or dealer to
5 offer or sell securities, and for a person to offer or sell securities using fraudulent practices. *See*
6 A.R.S. §§ 44-1841, 1842, 1991. The Commission is authorized to bring an action against any
7 person that violates the Act. *See* A.R.S. § 44-2032. The Commission also has the authority to
8 order a person violating the Act to cease and desist, pay penalties, and pay restitution. *See* A.R.S.
9 §§ 44-2032, 2036.

10 Moving Respondents argue that the language of Article 15 only allows the Commission to
11 “inspect and investigate” . . . “any corporation whose stock shall be offered for sale to the public
12 and of any public service corporation doing business within the state.” *See* Motion to Dismiss, p.
13 4, citing ARIZ. CONST. art. XV, § 4. While these specific constitutional powers are set forth in
14 Article 15, the Arizona Supreme Court has held that the constitutional powers expressly granted to
15 the Commission, “are merely the minimum, and that under the constitution, the commission may
16 exercise all powers which may be necessary or essential in connection with the performance of its
17 duties.” *See Garvey v. Trew*, 64 Ariz. 342, 346, 170 P. 2d 845, 848 (1946). “[T]he legislature may
18 enlarge or extend the powers and duties of the Commission over the subject matter of which it has
19 already been given jurisdiction, and other matters of the same class not expressly or impliedly
20 exempt by other provisions of the Constitution.” *See Wright*, 64 Ariz. at 139, 166 P.2d at 949; *see*
21 *also* ARIZ. CONST. art. XV, § 6 (“The law-making power may enlarge the powers and extend the
22 duties of the corporation commission, and may prescribe rules and regulations to govern
23 proceedings instituted by and before it . . .”).

24 By passing the Act, the Arizona legislature did just that – enlarged the powers and duties of
25 the Commission over the subject matter of securities regulation. The Act gives the Commission

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Division is not “asking for anything” other than that Moving Respondents present their case, if they have one, which is the direct result of their Request for Hearing.

1 jurisdiction to administer and enforce its provisions, including the authority to regulate the offer
2 and sale of securities. In *State ex rel. Corbin v. Goodrich*, the Arizona Court of Appeals rejected a
3 constitutional argument that the Commission could not institute an action for violations of the Act
4 against an individual involving commodity investment contracts. 151 Ariz. 118, 121, 726 P. 2d
5 215, 218 (App. 1986). Citing favorably to *Wright*, the *Goodrich* court held that the investment at
6 issue was a security under A.R.S. § 44-1801, and stated that “[t]he legislature, by enacting the
7 Securities Act, acknowledged the commissioner’s authority to regulate the sale of securities. We
8 find the commission acted within its constitutional authority in this case.” *Goodrich*, 151 Ariz. at
9 121, 726 P. 2d at 218.

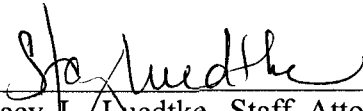
10 While Moving Respondents argue that Article 15 of the Arizona constitution does not
11 allow actions against individuals (Mogler) or private limited liability companies (the Tri-Core
12 entities) because they are not corporations, the above-cited case law clearly dispels that argument.
13 The Act enlarged the powers of the Commission so that it can bring actions against any person
14 violating the Act, and defines “person” as “an individual, corporation, partnership, association,
15 joint stock company or trust, limited liability company, government or governmental subdivision
16 or agency or any other unincorporated organization.” See A.R.S. § 44-1801(16). Moving
17 Respondents also argue that because they have not sold “stock” the Commission has no
18 constitutional authority to regulate them. Again, Moving Respondents ignore that the
19 constitutional language is merely the minimum, and that the Commission’s authority has been
20 statutorily expanded beyond the simple sale of stock by a corporation. As noted previously, the
21 Act allows the Commission to bring an action for the unlawful offer or sale of certain securities –
22 including notes which are at issue in this case – as enumerated in the statute. See A.R.S. § 44-
23 1801(26).

24 The case law cited above clearly mandates that the Commission, and thus the Division, is
25 acting within its constitutional and statutory mandate in this case. The Motion to Dismiss should
26 be DENIED.

1 **II. Conclusion.**

2 Moving Respondents have provided no valid basis for their constitutional attack on the
3 Commission's jurisdiction to bring this action. The case law and statutory authority of the Act are
4 clear that such power and jurisdiction is valid. However, one portion of Moving Respondent's
5 Motion to Dismiss is correct – Moving Respondents have an absolute right to present their case at
6 hearing as they have requested. They can do just that on May 6-8, 2014, as scheduled.

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8 RESPECTFULLY SUBMITTED this 22nd day of April, 2014.

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10 
11 Stacy L. Luedtke, Staff Attorney for the Securities
 Division

12 ORIGINAL and 9 copies of the foregoing
13 filed this 22nd day of April, 2014 with:

14 Docket Control
15 Arizona Corporation Commission
16 1200 W. Washington St.
 Phoenix, AZ 85007

17 COPY of the foregoing hand-delivered
18 this 22nd day of April, 2014, to:

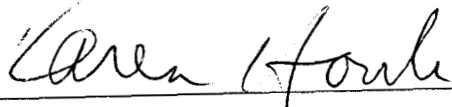
19 The Honorable Marc E. Stern
20 Administrative Law Judge
 Arizona Corporation Commission
21 1200 W. Washington St.
 Phoenix, AZ 85007

22 COPY of the foregoing mailed
23 this 22nd day of April, 2014, to:

24 Irma Huerta
25 C&D Construction Services, Inc.
 130 W. Owens Ave.
26 Las Vegas, Nevada 89030

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2 Individually, and as Representative of Tri-Core Companies, Tri-Core Business Dev.
3 8800 East Chaparral, Suite 270
4 Scottsdale, Arizona 85250

5 Guy Quinn
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